

Non-paper March 2025 by Finland and Sweden Potential EU Space Act

Potential EU Space Act

EU should reduce the regulatory and administrative burden it imposes on Member States and EU companies and institutions while efforts should be made to support technological capacity-building and innovation and to incentivize public and private investments in the space sector. For that purpose, we would be interested in an approach that would put the focus on supporting and incentive measures instead of binding obligations. Introducing new sector-specific regulations on EU actors and on international partners as an additional level of binding obligations in addition to national and international space law seems not to serve the goal of simplification and might be conducive to hinder the willingness to stay in the EU or to co-operate with us.

Background

In September 2023, the European Commission launched its EU Space Law initiative which would entail new regulations upon the space sector in the EU. The information the Commission has shared thus far has raised concerns regarding the anticipated law proposal, and we wish to draw the Commission's attention to the reservations and constraints expressed on the EU Space Law initiative, including those in the following documents:

- Non-paper by Finland (January 2024);
- Non-paper by Germany-Italy-Slovakia (December 2024); and
- "Written comments in response to the 3rd workshop organised with the Member States on 10 December 2024 on the Proposal for a legislative act for the safety, resilience, and sustainability of space activities in the Union" submitted by representatives of some EU Member States in February 2025.

Also recalling the Targeted consultation on EU Space Law launched by the Commission in September 2023 we would like to continue the discussions on the Policy Option 1 presented in the Commission's online questionnaire, including the idea of establishing a "space label" ("*Option 1: Promote adherence to non-binding standards, best practices and guidelines*"), and would suggest the following to be considered:

Dual nature of space technology and State's sovereign rights on space activities

Considering the dual-use of most of space technologies, we reiterate that while strengthened defence-related funding is important at EU level, defence and national security interests nor other fundamental State functions must not be endangered by EU interventions. E.g. actors within the field of national security or defence may benefit from space services provided by commercial entities when necessary without having to control or procure the entire mission. Accordingly, the decision-making and legislative power regarding the authorization of space missions in accordance with Art. VI Outer Space Treaty, including licensing conditions, must remain in the competence of the Member States in line with the EU Treaties.

National space legislation and licensing conditions are used to manage and minimize State's risks taking into account the obligations under UN Space Treaties, i.e. international responsibility and liability in particular. Art. 114 of the Treaty on the Functioning of the European Union (TFEU) cannot be used as a legal basis to circumvent express exclusion of harmonization laid down in Art. 189(2) TFEU to set forth regulations that would prevent Member States exercising their competence in accordance with the EU Treaties (see also Art. 4(3) TFEU) as well as the rights and obligations under UN Space Treaties.

International co-operation and intergovernmental organizations

The United Nations (*UN*) remains as the primary forum for ensuring that space activities and related regulatory developments are carried out in accordance with international law, and there are also other intergovernmental organizations (*IGO*) with great relevance in the space sector. We highlight the importance of not only the EU and its Space Programme but also the crucial role of other European IGOs, such as European Space Agency (*ESA*) and European Organisation for the Exploitation of Meteorological Satellites (*EUMETSAT*), for Europe's space capabilities and the development thereof. International co-operation by means of IGOs in accordance with their constituting rules and the sovereign rights of their Member States as well as co-operating States must not be challenged or complicated by EU legislation.

It is also important that EU legislation does not create any hindrances for EU Member States in terms of the NATO Alliance taking into account NATO's Space Policy which includes co-operation with partners and relevant international organizations as well as opportunities to foster cooperation between NATO and space-related industry and the commercial sector.

Space label

It could be considered if establishing some sort of "space label" verifying e.g. advanced space technology or service providers could help with critical procurements in the EU and simplifying space actors' access to EU funding or other financing while also promoting adherence to generally accepted international guidelines. A labeling scheme could promote harmonized practices that might benefit both the industry as well as the States as licensing authorities and as customers of space services (incl. for the purpose of national security and defence). A "space label" could serve as a tool for mutual recognition and as a demonstration of compliance with certain requirements on safety, resilience and sustainability. Already existing mechanisms and instruments, such as CER and NIS2 directives as well as globally used standards or guidelines, should be utilized where applicable to avoid overlapping and duplication or fragmentation (recommended elements elaborated below).

Incentives instead of binding obligations might be more suitable means to promote innovations and technological development as well as effective allocation of resources to support the growth of the space sector. Thus, applying for a space label should be voluntary for the operator, but it could be a requirement e.g. in EU calls and procurements. Member States would also have the opportunity to use the space label in the awarding of public contracts if they so wish, e.g. for setting requirements for purchasing space products and services. Furthermore, Member States could use elements created for the space label in their national space legislation and/or licensing processes if and where they would deem this appropriate ("voluntary harmonization").

A space label might thereby provide means for promoting synergies and EU norms in a coordinated way between companies, governments and armed forces of each Member State, and the EU. Recalling the *Consolidated Defence in Space Forum position on the military exemption in the EU Space Law (2024)*, we highlight the need for close co-operation with Member States and their defence administrations and those responsible for NATO's Space Policy to discuss if and how such a space label (and/or Space Act) could serve their needs and interests.

Utilization of existing mechanisms

CER and NIS2 directives

CER and NIS2 directives cover some cyber security and resilience requirements regarding the ground segment in the space sector while taking into consideration the exclusion of harmonization

regarding the space segment (Art. 189(2) TFEU), and are intended as horizontal frameworks. Introducing new sector-specific EU legislation as “lex specialis” that would leave CER and/or NIS2 as “lex generalis” would not serve the goal of simplification and contains risks of overlapping and duplication, i.e. extra costs and unnecessary burden.

It should be monitored how far implementation of CER and NIS2 regarding the space sector takes us, and to examine if experience gained through these Directives and their implementation can help with the resilience of space segment as well. It could be considered whether requirements similar to CER and NIS2 would serve as requirements for those operators that would want to be verified with a “space label” e.g. in order to be eligible for EU procurements etc.

Cyber Resilience Act (CRA)

CRA sets forth cybersecurity requirements for products that contain a digital component, obliging manufacturers and retailers to ensure cybersecurity throughout the lifecycle of their products. CRA is said to elevate also the cybersecurity of key components necessary for satellite operations. Accordingly, the applicability of CRA in the space sector should be taken into consideration, and not to create parallel systems with new sector-specific regulations. It could e.g. be considered whether the CE marking used to products to indicate that they comply with the CRA requirements may serve as one of the elements considered under a “space label”.

Technical standards

The EU should promote adherence to internationally recognized non-binding standards, best practices and guidelines by means of supporting and incentivizing. A space label could serve as a tool to support certain internationally used technical standards. E.g. standards created for space systems and space activities by

- International Standardisation Organisation (*ISO*),
- Consultative Committee for Space Data Systems (*CCSDS*),
- European Committee for Standardization (*CEN*), and
- European Cooperation for Space Standardization (*ECSS*)

could be used to define the suitable and appropriate requirements used in the space label verification system.

Other non-legally binding instruments

The EU’s work towards enabling better recognition of other non-binding instruments might also benefit from a space label. Building on the globally recognized guidelines helps to avoid fragmentation and facilitate co-operation with international partners along with the paramount objectives of space safety and sustainability. Several internationally prepared and commonly accepted guidelines on the reduction of space debris and for the promotion of sustainable space activities have been issued, e.g.:

- The Space Debris Mitigation Guidelines of the Inter-Agency Debris Coordination Committee (IADC),
- Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space (COPUOS),
- European Code of Conduct for Space Debris Mitigation by European space agencies; and
- COPUOS Guidelines for the Long-term Sustainability of Outer Space Activities of the Committee on the Peaceful Uses of Outer Space.

For one’s part these would offer a way ahead for a space label that could also be internationally recognized as a European example of how to further common objectives of space safety and sustainability.